

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
May 11, 2004 Session

**LLOYD RAYMOND SWEEZY v. KATHY MAE SWEEZY**

Appeal from the Circuit Court for Hamilton County  
No. 00D1349 W. Neil Thomas, Judge

**FILED JUNE 11, 2004**

**No. E2003-00970-R3-CV**

Husband proposed that the marital residence be sold, with the proceeds used for the payment of marital debts. The proposal was accepted but Husband complains on appeal that some of wife's debts were not marital debts. Judgment of contempt vacated. Remained of judgment affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated in Part;  
Affirmed in Part**

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., E.S. and CHARLES D. SUSANO, JR., J., joined.

Liza Z. Espy, Chattanooga, Tennessee, for Appellant, Lloyd Raymond Sweezy.

Grace E. Daniell, Chattanooga, Tennessee, for Appellee, Kathy Mae Sweezy.

**OPINION**

Husband complains of (1) the division of marital assets, (2) the allocation of debts, (3) the award to wife of rehabilitative alimony, (4) the award of attorney fees, and (5) the judgment of contempt. We review the record *de novo* and assume the factual findings are correct unless the evidence otherwise preponderates. Rule 13(d) Tenn. R. App. P.

The thrust of Husband's argument that the marital assets were not properly divided is directed by his insistence that he acquired the residence of the parties before his marriage to the Appellee in 1988. He purchased the residence in 1981 when he was married to his first wife, from whom he was divorced in 1984. He and his present wife began living together in 1985. There was little or no equity in the residence at that time; loans were taken out with the residence as security, repairs were made, and in 1991 when the residence was again refinanced there was only slight equity in the residence.

They jointly owned and managed a successful carpet installation business from the profits of which they paid the indebtedness owing on their residence, which the trial judge ordered sold with

the proceeds utilized for the payments of marital debts. Husband, through his attorney, proposed that the court order the residence sold and that the credit card debts in their joint names or in wife's name be paid from the proceeds of the sale, otherwise "they will never be paid." The trial court obliged, and Husband is hardly in a position to complain. He argues that the marital debts exceeded the value of the property, but that most of the debts were incurred by credit card usage by wife, especially after the parties separated. This fact affords him no relief, because marital debt is defined to mean all debts incurred by both parties during the course of marriage up to the date of the final hearing. *See, Alford v. Alford*, 120 S.W.3d 810 (Tenn. 2003). The trial court found that the debts incurred by Wife after the parties separated were necessary for her livelihood. The evidence does not preponderate against this finding. In light of Husband's accepted proposal to the trial court, we see no reason to belabor this issue further.

Husband complains that he should not have been ordered to pay wife \$750.00 monthly for forty-eight (48) months, apparently insisting that he could not pay this amount owing to income limitations. According to their joint tax returns, his net income in 1999 was \$12,925.00; in 2000, his net income was \$10,194.00. His income and expense statement indicated that at the time of the hearing in Nov. 2001, his net monthly income from the carpet business was \$717.67 per month.

The trial judge evidenced some skepticism about the true earnings of Husband. For the year prior to the divorce, the carpet business generated about \$3200.00 net monthly, and there was substantial evidence that Husband was paid in cash for many jobs which was never deposited. Suffice to say that we cannot find that the trial judge abused his discretion in making the award of alimony, the need of which by wife is not questioned.

Husband also questions the award of attorney fees to Wife. This case was inexplicably time consuming – it was tried for most of five days – resulting in two (2) orders subsequent to the judgment of divorce. Wife's attorney was awarded \$7000.00 for the divorce trial, \$2000.00 for the hearing of Husband's motion to alter and amend, and \$400.00 for the contempt hearing. The reasonableness of these fees is not questioned; neither is the necessity. Husband acknowledges that the issue is essentially governed by the rule of discretion, and we agree. *Aaron v. Aaron*, 909 S.W.2d 408 (Tenn. 1995). The record reveals no abuse of discretion on the part of the trial judge.

Husband argues that the trial judge erred in finding him in contempt for his failure to pay the arrearage of temporary alimony in the amount of \$4525.00. A judgment requiring him to pay \$50.00 monthly was entered against him, together with a finding of contempt for failing to pay as previously ordered, for which he was sentenced to ten days confinement which was suspended. Husband did not appear at the hearing on the contempt petition, and he was sentenced *in absentia*. Since his contempt was criminal in nature, it was necessary for the court to find that he had the ability to pay at the time the support was payable, and that his failure to pay was willful, that is, was deliberate and intentional. *Ahern v. Ahern*, 15 S.W.3d 79 (Tenn. 2000). The order adjudicating contempt provides only that Husband did not appear for the hearing, that the petition is well-founded, and that he is guilty of contempt of court for "failure to pay alimony as previously ordered and for failure to appear at the hearing." The court made no finding concerning Husband's ability, at that time, to pay, and

made no finding that the failure to pay was willful. Since Husband's argument is limited to the issues of ability to pay and willfulness, we pretermitt a discussion of the significance of the *in absentia* sentencing. The finding of contempt is vacated.

Finally, Wife argues that she should have been awarded permanent rather than rehabilitative alimony. Tennessee Code Annotated § 36-5-101(d)(1) requires a consideration of all relevant factors to determine whether an economically disadvantaged spouse can be rehabilitated. Wife is now forty-four years old. She has a high school degree; Husband has a bachelors degree in elementary education, and taught school for six years before he and Wife started the carpet business. After an event which triggered the divorce action, Wife suffered severe mental problems which required hospitalization, and she remains under the care and treatment of a psychiatrist. She began cleaning homes and at the time of trial was earning \$100.00 weekly, and was undergoing physical therapy for problems with her shoulder and knees in addition to the psychiatric treatment.

The statutory scheme reflects a preference for rehabilitative spousal support as opposed to long term support. Rehabilitative support enables the disadvantaged spouse to acquire additional job skills and training that will enable her to be more self-sufficient. *Goodman v. Goodman*, 8 S.W.3d 289 (Tenn. Ct. App. 1999). Appellate courts are disinclined to second-guess the trial courts respecting spousal support, *Ingram v. Ingram*, 721 S.W.2d 262 (Tenn. Ct. App. 1986) and we choose not to second-guess the trial judge in the case at Bar.

The finding of contempt is vacated. In all other aspects the judgment is affirmed. Costs are assessed to the Appellant.

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WILLIAM H. INMAN, SENIOR JUDGE